IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7708 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAFULSINH GOMANSINH GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

Mr.Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/01/2003

ORAL JUDGEMENT

By filing this Special Civil Application, the

petitioner-detenu has challenged the order dated 5.8.2002, by which the petitioner is detained under sub-section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. At the relevant time, the petitioner was running a fair price shop. He was given a licence for running the fair price shop by the Government since 19.9.1988. The said licence was renewed from time to time and the same was lastly renewed upto 31.12.2002.

As per the detention order, the petitioner was found to have sold wheat, rice and other essential articles by charging more than the prescribed amount, he was not maintaining the accounts properly and he has indulged in certain irregularities in the matter of disbursement of essential articles. Deficit of certain quantity of wheat and rice was even admitted by the detenu, as mentioned in the detention order. The concerned Department of the State of Gujarat made discreet enquiry and recorded statement of some card-holders as well as the statement of the detenu as well as his wife and, ultimately, the Civil Supplies Department also suspended the licence of the present petitioner for a period of 90 days, as per the provisions of the Essential Commodities Act. The said licence was suspended by an order dated 31.7.2002. It is not in dispute that the said licence, therefore, was already suspended at the time when the said detention order was issued against the petitioner. Subsequently, the District Magistrate passed the impugned order dated 5.8.2002, detaining the petitioner under the preventive detention, with an object to prevent him from indulging in the same illegal activities of black-marketing of essential articles by charging more price, etc. The detaining authority, while passing the impugned order, came to the conclusion that it is proved that the petitioner has tried to sell the essential articles by charging more price than what is prescribed and, accordingly, committed breach of the licence condition and has committed breach of Section 23 of the Gujarat Essential Commodities (Licensing, Controlling and Stock Declaration) Order, 1981 and has also committed breach of Clause 4(1) of the licence. The impugned order of detention is challenged at the instance of the detenu by way of this petition.

At the time of hearing of this petition, Mr.Prajapati, learned Advocate for the petitioner, pressed into service only one point and that is non-mentioning of relevant fact by the detaining authority in its order as regards notice for cancellation

of licence of authorisation issued to the petitioner. It was argued by Mr.Prajapati for the petitioner that before passing the impugned order of detention, the licence of the petitioner was already suspended by the authority, and, subsequently, the Civil Supplies Department has already issued notice for cancelation of the said licence and the said notice was issued on 7.6.2002, i.e. prior to the impugned order of detention. It is submitted that, at least, the aforesaid important fact about issuance of notice for cancellation of licence of authorisation was required to be mentioned by the Detaining Authority in its order, which has not been done, and, therefore, according to him, the detention order suffers from non-application of mind. He submitted that the aforesaid important document, by which the petitioner was subjected to the show the cause notice, was required to be placed before the Detaining Authority by the Sponsoring Authority, and if that material is not placed before the Detaining Authority, the subjective satisfaction of the Detaining Authority can be said to have been vitiated on account of non-availability of important document before it.

Mr.Pancholi, learned AGP, however, submitted that the Sponsoring Authority has already submitted the aforesaid important document, i.e. show cause notice for cancellation of licence of authorisation, before the Detaining Authority. However, he has conceded that, in the detention order, there is absolutely no reference about the aforesaid aspect. It is not in dispute that the licence issued to the petitioner was already suspended prior to the passing of the detention order and prior to passing of the detention order, even proceedings are already initiated by the Competent Authority for cancelling the licence of the petitioner.

The object of detaining a person under preventive detention is to see that he may not repeat the same type of illegalities and he is required to be kept at a safe distance so that he may not be tempted to do the same thing again. In the instant case, in my view, the show cause notice for cancelling the licence of authorisation, by which the petitioner was authorised to run the fair price shop, is the most vital and important document, because, if the licence is cancelled, naturally, the petitioner cannot be allowed to continue the same business and, therefore, there is no likelihood of committing the same type of illegalities in the matter of distributing essential articles. It may be a different thing if the detaining authority has considered the said document, in the form of show cause notice for

cancellation of licence, and, ultimately, might have reached his own conclusion whether that fact would be sufficient for passing the order of detention or not, but, in any case, at least that aspect of the matter is required to be kept in mind by the detaining authority at the time of passing the order. Reading the detention order, it is difficult for me to come to the conclusion that the detaining authority was aware about the issuance of such show cause notice, as, there is absolutely no reference in the entire order. if that document was placed before him, then, it was required to be mentioned by the detaining authority so that it cannot be said that the said document has altogether escaped the notice of the detaining authority. In the instant case, it is not in dispute that the present petitioner has not even challenged the order of suspension of his licence. Not only that, Mr.Prajapati, learned Advocate, has fairly stated that the petitioner-detenu is not going to ask for renewal of the licence, as, the petitioner is going to surrender the licence as renewal was only upto 31.12.2002. Mr.Prajapati submitted that when the petitioner is not going to apply for licence again by way of renewal in any manner, according to him, there is no question of repeating the said illegality again by the said detenu. However, that fact itself will not have much relevance so far as the merit of the detention order is concerned. However, the aforesaid statement of Mr.Prajapati, which he is making, on the basis of the instructions from his client, is recorded in the judgment so that the concerned authority may consider this aspect as and when request, if any, is made by the petitioner for renewal of licence. At that time, this aspect and this statement is required to be borne in mind by the authority.

Mr.Prajapati, has relied upon the judgment of the Apex Court in V.C. Mohan v. Union of India and others, AIR 2002 SC 1205, wherein the Apex Court has held as under :-

> " ... ...
>
> 13. By reason of the aforesaid, we feel it expedient not to express any opinion as regards the question of delay rendering the charges stale or being too remote. A statute has been engrafted in the Statute Book but that does not, however, mean and imply that the concerned official would be at liberty to whittle down the liberty of the citizens of the country. The

constitutional sanction for preventive detention cannot be said to be without any limitation and apprehending such a conduct of the concerned officials, the founding fathers probably laid down its safeguards from the misuse of the powers as conferred. The hallmark of the concept of justice, as is available in the justice delivery system of the country is that the conduct of the Detaining Authority or as a matter of fact any governmental authority ought to be fair and reasonable. The accepted methodology of governmental working should always be in tune with the concept of fairness and not dehors the same - a person is being placed under detention without trial and there is neither any scope for over-zealous nor acting in a manner without due and proper application of mind - in either of the situation law Courts should be able to protect the individual from the administrative ipse dixit. The draconian concept of law has had its departure quite some time back and rule of law is the order of the day. It is this rule of law which should prompt the law Courts to act in a manner fair and reasonable having due regard to the nature of the offences and vis-a-vis the liberty of the citizens. The order as passed by the Settlement Commission on 15th February, 2001 directing the detenu to make payment of the additional duty as noticed above, cannot but be termed to be a very relevant material having a direct impact on the issue and in the event of non-placement of the same before the detaining authority, question of affirmation of the detention order would not arise. The observations of this Court in Rajindra and another (1994 (2) Supp. SCC 716) recording the need and requirement of the Central Government officials to be alive to the situation cannot but be said to apposite in the context.

xxx xxx xxx

16. On the question of representation, the records depict that the same was sent to the President of India on 10th April, 2001

> and the same was sent to the Ministry of Finance on August 16, 2001 - some explanation has been put forth, but we need not, however, detain ourselves in dealing with the same since we wish to state that non-placement of relevant materials before the detaining authority by the sponsoring authority is not only a lapse but a serious lapse on the part of the officials resulting in the order of detention to be declared unlawful and illegal and thus resultantly cannot be sustained.
>
> 17. In the view as above, the writ petition succeeds. The detention order stands quashed and set aside.
>
> ... ..."

So far as the present detention order is concerned, in my view, since the authority has not mentioned the most relevant part in the order about the issuance of notice regarding cancellation of licence, which may have some bearing so far as preventing the petitioner from doing illegal activities, the order of detention deserves to be set aside on the ground of non-mentioning of the relevant facts in the detention order and on that ground, in my view, the subjective satisfaction of the authority can be said to have been vitiated, as the important aspect about initiation of proceedings by the competent authority for cancelling the licence is not taken into account.

In view of the aforesaid facts and circumstances, the order of detention is quashed and set aside. The petitioner is set at liberty forthwith unless he is required for any other case. It is clarified that in view of the concession made by the petitioner on the basis of the instructions from his client, the Department will not be obliged to issue fresh licence or renew the existing licence of the petitioner, as the petitioner has agreed to surrender the said licence for running fair price shop back to the Government.

The petition is accordingly allowed. Rule is made absolute accordingly.

Direct service is permitted.

13th November, 2002 (P.B. Majmudar, J.)

 ***

(apj)